89-39

Supreme Court, U.S.
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JUL 9 1989
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

SPRING TERM 1989

GEORGE N. MEROS

Petitioner

vs.

UNITED STATES OF AMERICA

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE

UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

George N. Meros, Pro Se
#09857-016
PMB 1000
FCI - Tallahassee
Tallahassee, FL 32301

34 pp

QUESTIONS PRESENTED

I. WHETHER THE TRIAL COURT VIOLATED THE PETITIONER'S FIFTH AND SIXTH AMENDMENT RIGHTS BY RESTRICTING CONFRONTATION OF KEY GOVERNMENT WITNESSES AND PROHIBITING THE INTRODUCTION OF EVIDENCE IN SUPPORT OF HIS DEFENSE.

II. WHETHER THE DEPOSITING OF CURRENCY IN INCREMENTS OF LESS THAN $10,000 TO THREE SEPARATE PARTNERSHIP ACCOUNTS ON THE SAME DAY IN BRANCHES OF THE SAME BANK, IN THE ABSENCE OF CONCEALMENT OF A MATERIAL FACT, CONSTITUTES A VIOLATION OF 18 U.S.C. §1001 IN CONNECTION WITH 31 U.S.C. §1081 AND §1059; 18 U.S.C. §2 IN CONNECTION WITH 31 U.S.C. §1081 AND §1059.

PARTIES TO PROCEEDING BELOW

United States of America
George N. Meros
Robert J. Papolos
Stephen Papolos
Albert Papolos
Achilles Vaseliades
Michael Ferrintino
Linda Ferrintino
Michael Rubinstein
John Frazier
Bernard Johnson
Robert English

But for the United States of America, these parties are not interested in this action.

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OPINION BELOW

The Opinion of the Court of Appeals is reported at page 1304, volume 866, of West's Federal Reporter, Second Series, and in an unpublished opinion. Both opinions are reproduced in the Appendix to this Petition at App. 1 _____.

JURISDICTION

The judgment sought to be reviewed was entered on February 13, 1989. Meros' Petition for Rehearing and Suggestion for Rehearing in Banc were denied on April 11. Jurisdiction is conferred on this Court by 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Fifth Amendment, United States Constitution

Sixth Amendment, United States Constitution

18 U.S.C. §1001

31 U.S.C. §1081, 1059

18 U.S.C. §2

31 U.S.C. §5311-22

31 CFR §103.22(a)

(See Appendix)

STATEMENT OF THE CASE

Petitioner George N. Meros and twenty-one other individuals were indicted by a grand jury in the Middle District of Florida. On August 16, 1985, a jury convicted Mr. Meros of the following criminal statutes:

Count One: conspiracy to violate RICO; Count Two: RICO; Count Three: conspiracy to possess with intent to distribute a schedule I controlled substance (marijuana) in excess of one thousand pounds; Count Four: conspiracy to import a schedule I controlled substance (marijuana); Count Five: possession with intent to distribute a schedule I controlled substance (marijuana); Count Eleven: use of a wire transfer in foreign commerce in aid of racketeering enterprise; Count Twelve: conspiracy to use a wire transfer in

interstate and foreign commerce in aid of racketeering enterprise; Count Thirteen: interstate and foreign travel in aid of racketeering enterprise; Counts Fourteen and Fifteen: defrauding an agency of the United States by trick, scheme or device; Counts Sixteen through Twenty-Two and Twenty-Five: causing a bank to fail to file currency transaction reports with the I.R.S.

Meros was sentenced to a total term of 40 years which was later reduced to 35 years by the Eleventh Circuit's reversal of one count.

On February 13, 1989, in a Per Curiam opinion, this Court reversed Appellant Meros' conviction based on Count 14 and affirmed all others.

STATEMENT OF FACTS

George Meros was a prominent St. Petersburg attorney. He had a general

practice and did both civil and criminal work (R82-56-58). Over the years, his firm's clients included several co-defendants as well as individuals who testified against him at the trial.

The charges against George Meros included participation in a RICO conspiracy, interstate travel in aid of racketeering (ITAR) and one substantive RICO offense. The Government alleged that Meros was involved in "money laundering activities" involving Swiss bank accounts as well as Grand Shores West (a time share development in which Meros was a partner), aiding in currency transaction violations and financing three drug smuggling ventures ("Mis Vicki", Toots" and "Mystar"). The majority of proof used to substantiate Meros' involvement was obtained through four witnesses: Byron Wever, Carol

Wever, David Strongosky and David Capo, all former clients of George Meros.

The "Mis Vicki" was the first smuggling venture in which George Meros allegedly participated. According to Byron Wever's testimony, corroborated by Carol Wever, his wife, Meros was first approached in August, 1978 with the proposition that Meros finance this operation (R34-16) and Byron Wever would be in charge of personnel (R34-19). Both the Wevers testified the cash for the purchase of the "Mis Vicki" was given to Wever by Meros at his law office (R32-28-29; R34-26-27). They further testified that Meros told them how to prevent a bank from filing CTRs so the money could not be "traced." They were advised to purchase wire transfers to pay for the "Mis Vicki" in sums less than $10,000 each (R32-32; R34-27-28). According to

Byron Wever, as part of the agreement, Meros was to pay his attorney's fees and bond if the venture was discovered by the authorities (R34-21). In return, Wever was to keep Meros' identity a secret (R34-21).

Meros was tied to the "Toots" venture through Byron Wever and David Strongosky. They both testified that Meros introduced them in the fall of 1978 (R28-152-153; R34-126-127). Meros backed the venture with money and Strongosky and Wever handled the rest (R28-152-155; R34-128). The venture was unsuccessful.

The "Mystar" was a venture Wever put together by himself with the money left over from the "Toots" deal (R34-132). Carol Wever and Donald Gray purchased the boat (R34-132). The venture resulted in seizure of the Coast Guard (R34-155) and Wever was eventually charged in 1981 with

a continuing criminal enterprise (R34-137) for his involvement in the "Mis Vicki", "Mystar" and several other boats (R34-137).

Throughout the course of the trial, suggestions were made that Carol Wever's brother Vinnie Carone was the moneyman behind these ventures and not George Meros.

REASONS FOR GRANTING THE WRIT

A. THE COURT OF APPEALS' OPINION REJECTING THE PETITIONER'S ARGUMENT THAT THE TRIAL COURT VIOLATED HIS FIFTH AND SIXTH AMENDMENT RIGHTS BY RESTRICTING CONFRONTATION OF KEY GOVERNMENT WITNESSES AND PROHIBITING THE INTRODUCTION OF EVIDENCE IN SUPPORT OF HIS DEFENSE CONSTITUTES SUCH A RADICAL DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

B. THE COURT OF APPEAL'S OPINION REJECTING THE PETITIONER'S ARGUMENT THAT THE DEPOSITING OF CURRENCY IN INCREMENTS OF LESS THAN $10,000 TO THREE SEPARATE PARTNERSHIP ACCOUNTS ON THE

SAME DAY IN BRANCHES OF THE STATE BANK IN THE ABSENCE OF CONCEALMENT OF A MATERIAL FACT DOES NOT CONSTITUTE A VIOLATION OF THE APPLICABLE LAW CONFLICTS WITH THE DECISIONS OF OTHER FEDERAL COURTS OF APPEAL AND CALLS FOR THE EXERCISE OF THIS COURT'S SUPERVISORY POWER.

ARGUMENT

A. THE COURT OF APPEALS' OPINION REJECTING THE PETITIONER'S ARGUMENT THAT THE TRIAL COURT VIOLATED HIS FIFTH AND SIXTH AMENDMENT RIGHTS BY RESTRICTING CONFRONTATION OF KEY GOVERNMENT WITNESSES AND PROHIBITING THE INTRODUCTION OF EVIDENCE IN SUPPORT OF HIS DEFENSE CONSTITUTES SUCH A RADICAL DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

The trial court's systematically excluded any and all evidence that substantiated Meros' theory of defense. The Eleventh Circuit ignored the systematic exclusion, choosing instead to review isolated rulings. The Court's failure to address the substance of

Meros' assertions constitutes a radical departure from the accepted and usual course of protecting due process rights.

Meros' defense was premised on the theory that none of his dealings with the individuals in this case were illegal. He was not Byron Wever's partner or the "money man" behind any smuggling venture. (R29-150; R72-183; R32-25; R34-16; R35-165; 38-140).

The defense was rooted in the fact that the key prosecution witnesses, Byron Wever, Carol Wever, and others, conspired to protect Vinnie Carone and to frame Meros. Carol and Byron Wever's cooperation hinged on the Government's agreement not to ask either of them <u>any</u> questions regarding Carol's brother, Vinnie Carone (R32-155; R33-21-23; R35-45), a well-known, long established drug smuggler (R38-125).

An accused has a constitutional right to present a defense. United States v. Wasman, 641 F.2d 326 (5th Cir. 1981) (Unit B); United States v. Riley, 550 F.2d 233, 236 (5th Cir. 1977); United States v. Flom, 558 F.2d 1179 (5th Cir. 1977); Boykins v. Wainwright, 737 F.2d 1539, 1544 (11th Cir. 1984). That right is not limited to the right to testify; an accused also has a right to introduce evidence in support of his defense. See Washington v. Texas, 388 U.S. 14, 19 (1967). "[D]ue process in a criminal trial entitles him to call witnesses in his own behalf and to offer their testimony, and he certainly has the right to present his version of the facts as well as the prosecutor's to the jury, so it may decide where the truth lies." Chambers v. Mississippi, 410 U.S. 284 (1973).

Meros' cross-examination of Byron Wever regarding Carone's true involvement with these charges and what Wever told others was met with obstinate resistance. Wever either outright denied Carone's involvement, or claimed lack of memory. Much of these questions concerned what Wever told GBI Agent Harry Coursey who was involved in an undercover capacity with Wever in the "Mis Vicki" smuggling venture from its inception to resulting seizure (R75-16).

QUESTION: "So you never made the statements to Agent Coursey or Agent Mason that Vinnie was your partner? . . ."

ANSWER: "That is correct" (R35-73).

". . . I remember telling Harry at one time or another that Vinnie was having some legal problems in Florida, but I do not ever remember referring to him in the context that he was my partner." (R35-76).

QUESTION: "On April 11, 1978, approximately 4:00 p.m., did you state [to Coursey] that you were having a big meeting with your partner and that you were going to discuss buying a big shrimp trawler?"

ANSWER: "I have no recollection of that sir." (R35-88).

QUESTION: "Did you state to him that . . . your partner, Carol's brother, and it would be the same as his deal except that you were using the partner's . . . boat? Did you make that statement?" (R35-94).
ANSWER: "I deny that." (R35-95).

QUESTION: "Did you state to Agent Coursey and Mason that you were in the process of buying a boat, doing the deal with Vinnie and a friend of Vinnie's from out West; did you make that statement on April 5, 1978?"
ANSWER: Absolutely not . . . I deny that." (R35-139).

QUESTION: "On August 23, 1978 . . . Did you tell Harry Coursey that you'd be talking to your partner within 24 hours and would be discussing the purchase of a Detroit diesel?"
ANSWER: "I have no recollection of that." (R35-155).

QUESTION: "Did you state to Agent Coursey that the broker had found a boat but there had been a misunderstanding with Vinnie about purchasing that boat?" (R35-156).
ANSWER: "I never made that statement. The "Mis Vicki" was not bought through a broker . . ." (R35-146).

QUESTION: Did you say . . . your partner was on the run from the law?"
ANSWER: "I have no remembrance of that, sir." (R35-146).

QUESTION: "Was Vinnie on the run in

May of 1978?"
ANSWER: ". . . . I never told Mr. Coursey that he was on the run." (R35-151).

By: Ms. Wilkerson (Redirect): "Was Vincent Carone involved in the "Mis Vicki" or the "Mystar?"
ANSWER: "Absolutely not."

THE COURT: (During redirect) "Well, did you, did you tell him [Agent Coursey] who your partner was?"
THE WITNESS: "Yes, I did."

THE COURT: "Did you tell him it was Vinnie somebody?"
THE WITNESS: "Absolutely not, that's absolutely false." (R38-109-110).

Meros offered the following evidence, which was excluded by the trial court, to counter and impeach Wever's testimony and to prove it was Vinnie Carone and not George Meros involved in the illegal ventures.

Regarding the "Mis Vicki" venture, questions were posed by Meros to undercover Agent Coursey such as: "Who did you determine that he [Byron Wever] was getting his money from?" (R76-31);

"Was it George Meros?" (R76-32); "Did he at any time state that George Meros was his partner?" (R76-33); "In connection with your investigation, did you learn the name Vinnie Carone?" (R76-55); "Did you hear Byron Wever discuss with Carol Wever who the money man in the case was?" (R76-58). If permitted, Agent Coursey would have testified that:

(A) Byron Wever told him in meetings after January 1978 that: (1) Vinnie Carone was the money man and his partner in the "Mis Vicki" (R76-100-11); (2) He and his partner, Vinnie Carone, had much success with using diesel boats for hauling marijuana (R76-100-11); (3) This type of statement was made on numerous occasions throughout their dealings. (R76-100-11).

(B) He was present at discussions between Byron and Carol Wever and the

following statements were made:

(1) "We have to get in touch with "V"."; (2) "We have to get in touch with Vinnie."; (3) "I'm going to talk to Vinnie about the purchase of the boat to bring in the marijuana; the "Mis Vicki" (R76-100-12).

(C) Byron Wever stated that he had had successful marijuana dealings with people in South Carolina before the "Mis Vicki" was ever done. (R76-100-12).

The Court prohibited this proferred testimony from Agent Coursey on the basis that it was hearsay and refused to admit it for the limited purpose of impeachment. (R77-13). This ruling was error and deprived Meros of his ability to prove that the key witnesses were framing him and it was Carone and not he who was the leader of the smuggling enterprise. The exclusion of this

evidence precluded Meros from defending himself in violation of the Fifth Amendment right of due process, Chambers v. Mississippi, 410 U.S. 284 (1973); and the Sixth Amendment right of confrontation. The evidence was admissible pursuant to Fed.R.Evid. 801(d)(2)(E) ("In furtherance of the "Mis Vicki" venture) (although the appeal court held otherwise); Fed.R.Evid. 804(b)(3) and Fed.R.Evid. 803(24). See United States v. Parker, 749 F.2d 628 (11th Cir. 1984); United States v. Mathis, 559 F.2d 294 (5th Cir. 1977), and as impeachment pursuant to Fed.R.Evid. 613(b).

As the appeal court admitted, on cross-examination, the prime witnesses (referring to Byron and Carol Wever) "either denied Carone's involvement in the drug ventures or failed to recall

conversations and events that Meros alleged would establish his innocence."

(Unpublished Opinion, p.21).

> Blocked by the denials of the Government's witnesses, Meros attempted to introduce testimony from GBI Agent Harry Coursey -- who had infiltrated the smuggling operation-- concerning conversations that Coursey had had with the Government witnesses [Byron Wever] during the course of the conspiracy in which they stated that Carone, not Meros, was their partner in the smuggling ventures.

(unpublished opinion, p.21).

In the body of the opinion, the appeals court upheld the trial court's ruling that the evidence Meros sought to admit was hearsay and was not admissible pursuant to Fed.R.Evid. 801(d)(2)(E), and it deferred to the trial court's discretion regarding admission pursuant to Fed.R.Evid. Rule 803(24), again without analyzing its systematic abuse.

These were not the exclusive

vehicles through which Meros attempted to introduce this crucial evidence. Meros also sought to introduce this evidence substantively through Fed.R.Evid. 804(B)(3) and also as impeachment through Fed.R.Evid. 613(b). The Court summarily dismissed Meros contentions regarding these two rules in a footnote:

> Meros also argues that Agent Coursey's testimony was admissible under Fed.R.Evid. 804(B)(3) (statement against interest) and 613(b) (inconsistent statement). Rule 80[4](B)(3) applies only when the declarant is unavailable. Since Michael Ferrentino, the declarant, was available, Meros' argument as to Rule 804(B)(3) is without merit. Rule 613 is procedural in nature, and does not provide an independent basis for admissibility of evidence that is otherwise inadmissible as hearsay.

(unpublished opinion, p.21, n.9, pp. 37-38).

The Court apparently confused the players in this case. Michael Ferrentino

was not the declarant. He was a defendant. The declarant was Byron Wever, who throughout his testimony, claimed a "lack of memory" regarding conversations he had with Agent Coursey. This "lack of memory" made him "unavailable" as defined in Fed.R.Evid. 804(A)(3).

Accordingly, Coursey's testimony was admissible pursuant to Fed.R.Evid. 804(b)(3). See United States v. Harrell, 788 F.2d 1524 (11th Cir. 1986); United States v. Cruz, 797 F.2d 90, 97 (2d Cir. 1986); United States v. Lopez, 777 F.2d 543, 553-54 (10th Cir. 1955); United States v. Benveniste, 564 F.2d 335 (9th Cir. 1977). Moreover, the Court of Appeals cited Chambers v. Mississippi, 410 U.S. 284 (1973), to support its conclusion that the Appellant was denied "crucial substantiation of his asserted

defense of entrapment and thereby deprived him of a fair opportunity to defend against the Government's accusations."); United States v. Barrett, 539 F.2d 244 (1st Cir. 1976).

The Appeals Court's characterization of Fed. R. Evid. 613 as purely procedural in nature was also incorrect. Rule 613 provides a basis for introduction for the limited purpose of impeachment through contradiction. 3 WEINSTEIN'S EVIDENCE §613[01].

As this Court held in United States v. Winkle, 587 F.2d 705, 710 (5th Cir. 1979),

> Impeachment to demonstrate the untruth of a witness' testimony is not excludable as hearsay because it is not offered primarily to prove the truth of the matter asserted, but to contradict prior testimony.

See also: United States v. Eddy, 597 F.2d 430, 434 (5th Cir. 1979); Wammock v.

Celotex Corporation, 793 F.2d 1518 (11th Cir. 1986); United States v. Causey, 834 F.2d 1277, 1283 (6th Cir. 1987); United States v. Holt, 817 F.2d 1264, 1274 (7th Cir. 1987).

The testimony and evidence as to what Byron Wever told others regarding his partner and the money man in his smuggling ventures was crucial to Meros' defense. It established that someone other than Meros was guilty. The evidence offered was substantively admissible and even if the evidence did not fit within a recognized exception to the hearsay rule,

> In these circumstances, where Constitutional rights directly affecting the ascertainment of a guilt are implicated, the hearsay rule may not be applied mechanically to defeat the ends of justice.

Chambers v. Mississippi, 410 U.S. 284, 302 (1973); Green v. Georgia, 422 U.S.

95, 97 (1979).

Moreover, "evidence may be admitted to prove or disprove material facts in a case, even though a previous witness has testified to the contrary." United States v. DiMatteo, 716 F.2d 1361 (11th Cir. 1983). Rule 608 should not stand as a bar to the admission of evidence introduced to contradict and which the jury might find disproves a witness' testimony as to a material issue of the case." United States v. Calle, 822 F.2d 1016 (11th Cir. 1987); Collins v. Francis, 728 F.2d 1322 (11th Cir. 1984) (statement of a co-participant to a witness that he intended to kill and rape the victim and that he had killed others are admissible through witness testimony as non-hearsay to show co-participant's intent where defense argued that co-participant, not defendant, was actually

murderer). Furthermore, as this Court recently held, "Failure to permit a defendant to demonstrate the bias of a witness violates the confrontation clause. Olden v. Kentucky, 109 S.Ct. 480 (1988).

The denial through either cross-examination or presentation of evidence in his case-in-chief to present a defense contradicting a material element of the Government's theory (namely the identity of the man behind the smuggling ventures) resulted in a thorough denial of due process.

B. THE ELEVENTH CIRCUIT'S RULING THAT MULTIPLE TRANSACTIONS ON THE SAME DAY IN THE SAME BANK VIOLATES CURRENCY LAW CONFLICTS WITH A DECISION OF THE SEVENTH CIRCUIT.

The Seventh Circuit has held that as the currency statutes and regulations existed at the time of Mr. Meros' alleged conduct, it was not illegal to have

multiple transactions as the same dy in the same bank, in amounts less than $10,000. The First, Eighth and Ninth Circuits have reversed convictions for the reason that customers have no duty to disclose the aggregate amount of daily transactions, if each is less than $10,000. United States v. Gimbel, ____ F.2d _____, slip op. 86-1808 (7th Cir. 1987); United States v. Anzalone, 766 F.2d 676 (1st Cir. 1985); United States v. Larson, 796 F.2d 244 (8th Cir. 1986); United States v. Reinis, 794 F.2d 506 (9th Cir. 1986).

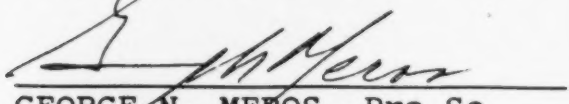
The appellate decision in this case directly conflicts with these decisions. There was not a shred of evidence of concealment in Meros' currency transactions, apart from multiple transactions on the same day in the same bank. The Eleventh Circuit has held that

this, standing alone, represents criminal conduct, while the First, Seventh, Eighth and Ninth have held that it does not. Mr. Meros, and others like him, should not be imprisoned for conduct that is perfectly legal in other parts of the country. This conflict should be resolved by this Court.

CONCLUSION

The Petition for Writ of Certiorari should be granted not because Mr. Meros is entitled to a second appeal, but because he is imprisoned for conduct that was perfectly legal in other parts of the country, and because he was denied the fundamental right to confront witnesses against him and to present a defense. Certiorari should be granted to resolve the patent conflict and to clarify the Fifth and Sixth amendments in this context.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari has been furnished by U.S. Mail this 28 day of June, 1989, to all counsel of record, along with a copy to: Terry Flynn, Gary Stegeland, Carole Wilkerson, Assistant U.S. Attorneys, Office of the U.S. Attorney, 500 Zack Street, Room 410, Tampa, FL 33602.

George N. Meros, Pro Se

APPENDIX